

COUNTY OF LINCOLN

New Mexico Special Meeting Board of County Commissioners

Preston Stone, Chair
Dallas Draper, Vice Chair

Thomas F. Stewart, Member
Elaine Allen, Member
Lynn Willard, Member

Minutes Tuesday, September 8, 2015

Minutes of the Special Meeting of the Lincoln County Commission held at 8:30 AM on September 8, 2015 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

1. Call to Order

Chair Stone called the Special Meeting of the Board of County Commissioners to order at 8:30:12 AM.

2. Roll Call

Roll Call.

Present: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Willard.

Absent: Commissioner Draper.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Whitney Whittaker, Chief Deputy Clerk.

3. Invocation

The invocation was presented by Chair Stone.

4. Pledge of Allegiance

- a. Pledge – US Flag
- b. Salute – NM Flag

5. Approval of Agenda

Motion: Acceptance of the Agenda and authorized the Chair to move items as necessary.

Action: Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (**summary:** Yes = 4).

Yes: Chair Stone, Commissioner Allen, Commissioner Stewart, Commissioner Willard.

Absent: Commissioner Draper.

6. Approval of Consent Agenda

- a. Sun Valley Water & Sanitation District Mill Levy Request

Motion: Approval of Consent items as presented, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (**summary:** Yes = 4).

Yes: Chair Stone, Commissioner Allen, Commissioner Stewart, Commissioner Willard.

Absent: Commissioner Draper.

SEE EXHIBIT A: Copies of Consent Items are attached hereto in reference thereto made a part hereof.

7. Approval/Imposition of 2015-2016 Property Tax Rates

Nita Taylor, Manager provided a copy of the Order Setting Property Tax Rates for 2015 received from the New Mexico Department of Finance and Administration (DFA) on September 3, 2015. Ms. Taylor reminded each year in the month of September the Board of County Commissioners must review and authorize the imposition of new tax rates for the next year by written order

delivered to the County Assessor within five days after receipt of the DFA's Order. Ms. Taylor noted DFA re-issued their order after the County Treasurer discovered an error in the original rates which did not reflect an increase in the predator control mill levy from 55 cents to 75 cents per head.

Beverley Calaway, Treasurer presented an Average Tax Rate History data chart comparing the 2015 Tax Rates to previous years dating back to 2005. Ms. Calaway also provided copy of an article discussing the yield control formula utilized by DFA. Ms. Calaway stated she and her staff analyzed and verified the tax rates initially sent by the DFA and found an error related to the increase in the predator control rate. Ms. Calaway expressed belief Lincoln County's 2015 property tax billing would exceed thirty million dollars. Ms. Calaway stated the Treasurer's office contacted each tax district involved and received confirmation the rates as imposed were correct and would provide adequate budget revenues for operation.

Paul Baca, Assessor presented a Central Assessed Value Comparison of 2015 values as compared to 2014. Mr. Baca commented on the valuations and provided a comparison of current and prior school districts tax rates. Mr. Baca reminded his office reviews local valuations yearly and in combination with State assessed values for certain properties these valuations drive the final property tax rates. Mr. Baca reminded one purpose of the yield control formula was to keep tax rates from being overly inflated. Mr. Baca also reminded an increase in valuations over the prior year did not necessarily result in a decrease in rates imposed by DFA.

Motion: Approve the Certificate of Property Tax Rates and issue a written order to the Assessor to impose the rates, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

Vote: Motion carried by unanimous vote (summary: Yes = 4).

Yes: Chair Stone, Commissioner Allen, Commissioner Stewart, Commissioner Willard.

Absent: Commissioner Draper.

SEE EXHIBIT B: Copy of the Certificate of Property Tax Rates for 2015 is attached hereto in reference thereto made a part hereof.

8. Approval of Memorandum of Understanding between the Village of Ruidoso and the County of Lincoln for the Provision of Regulation Services of Residential and Commercial Construction within certain specified areas of the County of Lincoln

Ms. Taylor presented the Memorandum of Understanding for review. Ms. Taylor noted the Village of Ruidoso was not currently meeting all MOU requirements and discussed the various challenges. Ms. Taylor stated the Village of Ruidoso Inspection Department had not been fully staffed since October of 2014 but they were actively recruiting an Electrical Inspector to fulfill that requirement. Ms. Taylor discussed the various benefits of the agreement to builders and residents but noted some complaints were received regarding the Village of Ruidoso's higher fees for inspection.

Motion: Approve the MOU between the County of Lincoln and the Village of Ruidoso, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

Vote: Motion carried by unanimous vote (summary: Yes = 4).

Yes: Chair Stone, Commissioner Allen, Commissioner Stewart, Commissioner Willard.

Absent: Commissioner Draper.

9. Approval of Resolution 2015-5 Final Infrastructure Capital Improvement Plan (ICIP) FY 2017-2021

Ms. Taylor informed during the August 18, 2015 Regular Meeting the 2015-2016 ICIP was unanimously approved but formal adoption of a Resolution was required by the State for final submission of the ICIP.

Motion: Adopt Resolution 2015-5; **Action:** Approve **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

Vote: Motion carried by unanimous vote (summary: Yes = 4).

Yes: Chair Stone, Commissioner Allen, Commissioner Stewart, Commissioner Willard.

Absent: Commissioner Draper.

SEE EXHIBIT C: Copy of Resolution 2015-05 is attached hereto in reference thereto made a part hereof.

10. Update of Solid Waste Collection RFP

Ms. Taylor informed the Request for Proposal (RFP) for Solid Waste Services for Lincoln County was issued on August 31, 2015. Ms. Taylor stated the RFP was advertised in the Albuquerque Journal, the El Paso Times, the Ruidoso News, and posted on the Lincoln County website.

Ms. Taylor provided the following list of key event dates:

1. 09-08-2015 Return of Acknowledgment of "Receipt" Form the Distribution List
2. 09-14-2015 Pre-proposal conference (mandatory)
3. 10-07-2015 Submission of Proposal
4. 10-28-2015 Contract Award for presentation to Commission for approval
5. 11-17-2015 Commission Approval

11. Executive Session Pursuant to the Open Meetings Act: Discussion of Limited Personnel Matters, Section 10-15-1, Sub paragraph H.(2); Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H.(7); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8).

Motion: To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1, Sub Paragraph H.(7) and the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8) and as follows:

New or Updated Matters since last report = *

1. *Cooper, Gale and DeBaca County News v. County of Lincoln, Sheriff of Lincoln County, et al.* D-1329-CV-2007-01364. Suit filed: October 15, 2007. Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information. Hearing took place Dec. 18, 2013, and Stipulated Judgment was entered June 4, 2014 in favor of Ms. Cooper. Ms. Cooper filed an appeal June 10, 2014, and Judge John F. Davis was assigned Aug. 3, 2014.
2. *Greentree Solid Waste Authority v. Lincoln County* D-1226-CV-2014-00095. Suit filed May 1, 2014. Verified Petition for Declaratory and Supplemental Relief: Injunction. County was served May 14, 2014. Mr. Paul Melendres has been retained by the County. Hearing on All Pending Motions took place Nov. 20 before Judge Ritter, who found Mr. Beauvais had a conflict of interest and was disqualified from representing GSWA. GSWA has retained Robert Doughty as new counsel Dec. 13, 2014. GSWA filed its Withdrawal of Plaintiff's Original and First Amended Verified Emergency Motion Seeking Further Relief on Plaintiff's Request for Preliminary Injunction Concerning Rate at which County Will Bill May 7, 2015. Lincoln County filed its Motion to Continue its Motion for Sanctions May 8, 2015 and the Order of Continuance was filed May 11, 2015.
3. *Greentree Solid Waste Authority v. Lincoln County, et. al.* D-0101-CV-2013-00104. Suit filed January 9, 2013. Petition for Declaratory Judgment; Preliminary and Permanent Injunction. Mr. Beauvais filed an appeal Feb. 27, 2014. Ruling on Reconsidering Stay denied by Judge Singleton June 11, 2014. GSWA's Brief in Chief filed Sept. 9, 2014. Record Proper was filed Sept. 25, 2014. Alto Lakes Water and Sanitation District's and Lincoln County's Joint Response Brief was filed with the Court of Appeals Oct. 24, 2014. GSWA filed its Reply Brief Dec. 1, 2014. The case has been submitted to a panel of judges for decision and the County received Notice of Submission from the Court of Appeals Jan. 2, 2015. Mr. Beauvais' Attorney Charging Lien was filed April 29, 2015.
4. *Water Rights Protests: New Mexico State Engineer Hearing Numbers: 14-039 and 14-041.* Protests of Applications 01300-1, 01300-2, 01300-3, 0826-2 into 0275 *et. al.* and H-272 *et al* (T) and H-50-1 into H-272 *et. al.* (T) filed July 15, 2013 pertaining to movement / transfer of water rights from the Hondo Valley to the Village of Ruidoso and the City of Ruidoso Downs. Docketing Order filed Sept. 18, 2014. Kelly Cassels/Sanders, Bruin, Coll & Worley, P.A. has been retained by the County, entered his appearance Sept. 22, 2014 and has responded in behalf of the County.
5. *Wesmax, Ltd. V. Paul Baca, Lincoln County Assessor* D-1226-CV-2014-00188 Appeal of the Final Order from Lincoln County Valuation Protest Board. Appeal filed Oct. 8, 2014. Case assigned to Basham & Basham/Dwyer. Record of Appeal and Transcript of Proceedings was filed Oct. 23, 2014.
6. *Edward Rider/Brennon Moorhead v. The Board of County Commissioners, Brack Rains, Matt Christian, Robert Shepperd* D 1226 CV 2015-00103 Complaint for Damages and Summons received June 15, 2015. Removed to Federal Court July 7, 2015.
7. A. *Preston, DeAnna v. County of Lincoln, Sheriff Robert Shepperd* D-1226-CV-2015-00112 Notice of Appeal of Post Disciplinary Hearing filed June 10, 2015.
B. *Preston, DeAnna: Notice of Charge of Discrimination* submitted to the U.S. Equal Employment Opportunity Commission July 21, 2015.

Tort Claims Notices Received or Threatened

2015

Cherry, Doris – Tort Claim Notice posted in Lincoln County News Jan. 1, 2015 stating possible Civil Rights Violation lawsuits regarding alleged Americans with Disabilities Act non-compliance in remodeling the Lincoln County Courthouse buildings.

McDaniel, Carl – Tort Claim Notice received Jan. 23, 2015 from Attorney John Sugg alleging violation of the Unfair Trade Practices Act and engaging in unfair or deceptive trade practices and/or unconscionable trade practices by GSWA.

UNM Hospital-Prins, Chad – Tort Claim Notice received Feb. 26, 2015 in which UNM Hospital seeks reimbursement of expenses incurred while Lincoln County Detention Center inmate Prins was on furlough.

Sehorn, Sean M. – Tort claim Notice received March 2, 2015 from Attorney Gary Mitchell alleging Lincoln County Detention Center failed to provide adequate medical treatment during inmate Sehorn's incarceration.

Lavin, Erica L. and Rathgeber, Jack – Tort Claim Notice received March 2, 2015 from Attorney Gary Mitchell alleging Constitutional Rights were violated resulting in wrongful termination.

Hanley, Constance – Tort Claim Notice received March 20, 2015 from Attorney John Sugg alleging violations of 42 USC section 1983, malicious prosecution, failure to investigate, defamation of character, libel and abuse of process.

Capitan Iron Mine through A. Blair Dunn – Threatened Litigation on April 1, 2015 against the County of Lincoln should Lincoln County require Capitan Iron Mine comply with Lincoln County Mine Ordinance 2009-01.

Chavez, Billy – Ordinance Violation: 2009-03 Regulating Refuse, Solid Waste and Litter in the County. March 10, 2015 certified letter mailed to Mr. Chavez giving him 30 days to dispose of debris on his property at 142 White Cat Road, San Patricio (Section 26, Township-10S, Range 16E, tract of land lying in the NE 4SE4). April 10, 2015 the property was inspected and noted no progress had been made.

Preston, DeAnna – Lincoln County Sheriff's Deputy – Threatened Litigation on April 22, 2015 through Attorney J. Robert Beauvais against the County of Lincoln in reference to Dep. Preston's Disciplinary Action Dispute.

Michael Barela and Jude Renney v. Brack Rains, Lincoln County Sheriff's Deputy, Lincoln County Sheriff Robert Shepperd, and the County of Lincoln – Tort Claim Notice received May 4, 2015 from Attorney Manuel Garcia/Hakanson Firm, alleging violation of defendants' 4th Amendment rights.

Culp, Susan v. LCMC/Lincoln County: Tort Claim Notice received May 4, 2015 from Attorney Katherine Channing Roehl/Roehl Law Firm alleging medical malpractice, negligent supervision, negligent credentialing by staff, administrators and doctors at LCMC on or about March 3, 2015 during Ms. Culp's gall bladder removal surgery.

Reyes, Roberto – Tort Claim Notice received May 15, 2015 from Attorney Timothy White/Valdez White Law Firm alleging illegal seizure, illegal search, illegal imprisonment and wrongful conduct of the Lincoln County Sheriff's Department.

Torres, Leopoldo: Tort Claim Notice received June 4, 2015 from inmate Torres alleging inmate-initiated attack on inmate Torres at Lincoln County Detention Center.

Wallace, Stephen: Tort Claim Notice received June 11, 2015 from Attorney Gary Mitchell alleging deprivation of Constitutional rights due to false incarceration at Lincoln County Detention Center without proceeding with a timely extradition.

Rider, Edward and Moorhead, Brennon – Tort Claim Notice received July 13, 2015 from Attorney W. Chris Nedbalek alleging Lincoln County Sheriffs' Deputies Rains and Christian destroyed personal property of claimants. See 2014 TCN alleging same.

Rodriguez, Victor – Tort Claim Notice received July 13, 2015 from Attorney W. Chris Nedbalek alleging hostile treatment from fellow employees while employed at Lincoln County Detention Center.

Turner, Bill – Tort Claim Notice received July 13, 2015 from Attorney W. Chris Nedbalek alleging exposure to unsanitary conditions at Lincoln County Detention Center.

Prudencio, Fabian and Corinne – Tort Claim Notice received July 24, 2015 from Attorney Daniel P. Ulibarri alleging negligence, personal injury, spoliation, indemnification and property damage against the County of Lincoln.

Yates, Barbara – Verbal Threat against the County issued July 21, 2015 due to ongoing flooding at her private property.

Davis, Jack and Rema – Verbal Threat against the County issued July 21, 2015 due to ongoing flooding at their private property.

2014

Ramos, Aaron – Tort Claim Notice received from Mr. Ramos March 18, 2014 alleging his rights were violated during incarceration at Lincoln County Detention Center. Mr. Ramos alleges damages by not being granted detainee to detainee correspondence.

Millerden, Kenneth and Anita – Tort Claim Notice received May 9, 2014 from Attorney Victor F. Poulos alleging negligence from staff at Lincoln County Medical Center during prepartum care for their infant son.

Ogden, John D – Tort Claim Notice received May 26, 2014 alleging mistreatment while incarcerated at Lincoln County Detention Center on March 11, 2014.

Rounds, Christopher – Tort Claim Notice received June 4, 2014 alleging being held in Lincoln County Detention Center without being advised of his charges.

Herbert, Crystal – Tort Claim Notice received June 23, 2014 from Attorney Matthew Coyte/Coyte Law alleging false imprisonment, due process violations, unlawful detention of a minor, emotional distress.

Class Action – Tort Claim Notice received June 23, 2014 from Attorney Ryan Villa/Cooper Law Firm alleging false imprisonment, false arrest, deprivation of rights at Lincoln County Detention Center that arise with Immigration and Customs Enforcement charges.

Atwell, Stacey – Tort Claim Notice received June 25, 2014 alleging unlawful seizure of her two minor children during a request for a deputy to assist in keeping the peace.

McGarry, Sean – Tort Claim Notice received July 25, 2014 from Attorney S. Doug Jones Witt alleging wrongful arrest, false imprisonment, malicious prosecution, intentional or negligent infliction of emotional distress, abuse of process, wrongful termination and retaliatory discharge regarding discharge from the Capitan Police Department.

Ramos, Aaron – Tort Claim Notice received August 7, 2014 alleging lack of Due Process for inmates at Lincoln County Detention Center.

Lambert, David and Bonnie – Tort Claim Notice received Sept. 8, 2014 from Attorney W. Chris Nedbalek alleging damage to Lambert property due to Mr. Rodney Bunsen using his own equipment to alter a platted County right of way without the authorization or knowledge of the County.

Rider, Edward Allen and Moorhead, Brennon – Tort Claim Notice received Oct. 20, 2014 by Attorney W. Chris Nedbalek alleging Lincoln County Narcotics Enforcement Unit officers destroyed items in a home.

Caughron, Brittany and Anderson, Amie – Tort Claim Notice received Oct. 24, 2014 by Attorney W. Chris Nedbalek alleging overcrowding of Lincoln County Detention Center as a violation of 8th Amendment Rights.

Ryen, Allen – Tort Claim Notice received Oct. 27, 2014 by Attorney W. Chris Nedbalek alleging Mr. Ryen was exposed to unsanitary conditions at Lincoln County Detention Center.

Inmate Group – Tort Claim Notice received Oct. 27, 2014 by Attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

McMurray, Cody – Tort Claim Notice received Nov. 6, 2014 by Attorney W. Chris Nedbalek alleging lack of adequate medical care at Lincoln County Detention Center.

Caughron, Brittany and Anderson, Amie – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging inadequate medical care and overcrowding at Lincoln County Detention Center.

Inmate Group – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

Long, Cameron – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging mistreatment by an Officer with Adult Probation and Parole.

McClarnon, Brian – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging violations of U.S. Constitutional Amendment rights.

Diana Martwick, 12th Judicial District Attorney – Tort Claim Notice received Nov. 25, 2014 alleging lack of adequate office space provided by the County of Lincoln.

Inmate Group – Tort Claim Notice received Dec. Dec. 22, 2014 by attorney W. Chris Nedbalek alleging inmates were mistreated at Lincoln County Detention Center.

2013

Allen, Katherine Elizabeth – Notice of Tort Claim received Sept. 12, 2013 from Katherine Allen against Lincoln County Detention Center for alleged injuries sustained during transport.

Harrisburg Documents – Attempts to recover Lincoln County documents illegally taken from the county. County Clerk Rhonda Burrows has been in contact with Harrisburg, PA in recovery efforts.

Action: Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 4).

Yes: Chair Stone, Commissioner Allen, Commissioner Stewart, Commissioner Willard.

Absent: Commissioner Draper.

Chair Stone recessed the Regular Meeting and convened the Closed Session at 9:06:38 AM

Chair Stone adjourned the Closed Session and reconvened the Regular Meeting at 9:38:57 AM

Commissioner Willard attested that matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting

12. Possible Action – Road Department Evaluation

Ms. Taylor requested approval to enter into an agreement with a provider to conduct a Road Department evaluation under procurement guidelines.

Motion: Enter into an agreement with a provider for the amount of \$2,500 , **Action: Approve, Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (summary: Yes = 4).

Yes: Chair Stone, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Absent: Commissioner Stewart.

13. Signing of Official Documents

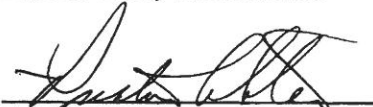
14. Next Regular Meeting

Tuesday, September 15, 2015

15. Adjournment

There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 9:40:53 AM

County of Lincoln
Board of County Commissioners



Preston Stone, Chair



Dallas Draper, Vice Chair



Elaine Allen, Member



Thomas F Stewart, Member



F Lynn Willard, Member

ATTEST:



Rhonda Burrows, County Clerk

October 20, 2015

Date Approved

